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May 3, 2006

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VIA HAND DELIVERY

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

AOR 2006-18

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2006 MAY -3, P 2: 54

Dear Commissioners:

On behalf of Congresswoman Kay Granger and the Kay Granger Campaign Fund ("Committee"), we respectfully request an advisory opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971 ("FECA" or "Act"), as amended. Our client seeks the Commission's opinion on whether the Committee may include language on its website providing visitors with information on how to order a copy of a children's book authored by Congresswoman Granger. Our client also seeks the Commission's opinion as to whether the Committee may e-mail individuals on its campaign mailing list to provide them with information on how to purchase a copy of the book.

FACTUAL BACKGROUND

Congresswoman Granger is a Member of the United States House of Representatives, elected from the Twelfth District of Texas, and is a candidate for re-election this November. Congresswoman Granger has authored a children's book entitled *What's Right About America: Teaching America's Values to America's Children*. Pursuant to her contract with the publisher, World Ahead Publishing, Inc., all royalties from the sale of the book will be paid to two charitable organizations designated by the author. Neither the Congresswoman nor her campaign will receive any royalties from the sale of the book.

The Committee has a website, <http://www.kaygranger.com>, that includes a variety of campaign materials, including a candidate biography, news articles, press releases, and policy position summaries. Along with this information, the Committee would like to add the following language informing visitors to the website about upcoming book-related events:

On July 4, 2006, Congresswoman Kay Granger's first book will be published. 'What's Right About America: Celebrating Our Nation's Values' is a short

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history of the universal values that make America great. Join Kay at _____ on July _____ for a reading and book signing.”

In addition to providing the information on its website, the Committee also would like to send an e-mail to its campaign mailing list letting recipients know about the book and including a link to Amazon.com or a similar website that would enable individuals to purchase copies of the book.

LEGAL DISCUSSION

Under the Act, a candidate may use a campaign contribution for a number of purposes, including, *inter alia*, “any other lawful purpose” unless the contribution is converted “to personal use.” 2 U.S.C. § 439a(a) & (b)(1). The statute specifies that conversion to “personal use” occurs when “the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office.” *Id.* § 439a(b)(2); *see also* 11 C.F.R. § 113.1(g). The FECA and the Commission’s regulations outline a number of expenses that, if paid for with campaign funds, would result in a *per se* violation of the personal use rule. *Id.* § C.F.R. 113.1(g)(1)(i). For other factual settings not specifically listed in the statute or regulations, the “Commission will determine, on a case-by-case basis, whether other uses of funds . . . are personal use.” *Id.* § 113.1(g)(1)(ii).

The Commission recently addressed the issue of whether a candidate for federal office would violate this provision by including certain book-related promotional material on his campaign website. In Advisory Opinion 2006-7, the Commission concluded that “expenses associated with marketing a book that a commercial publisher has published and for which it pays royalties to the author are expenses that exist irrespective of the candidate’s election campaign or duties as a holder of Federal office” and would amount to a prohibited personal use of campaign contributions. However, because the use of campaign assets to publicize information about the book was *de minimis*, the Commission approved the inclusion of certain language about the book on the candidate’s campaign website.

Because this prior guidance involved a publishing contract where book royalties accrued directly to the candidate, the Commission has not issued an opinion as to whether a similar or further use of campaign resources would be permissible if royalties from the sale of the book were distributed to certain Member-designated charitable organizations. Moreover, the Commission has not considered whether a

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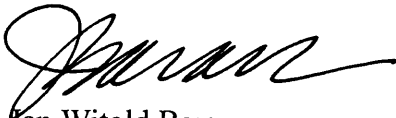
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campaign committee may use its campaign e-mail list to publicize the candidate's book and to provide information on how recipients of the e-mail may purchase their own copy.

Under both the Act and the Commission's regulations, the proposed activities appear to be permissible and would not constitute a prohibited personal use of campaign funds. On several prior occasions, the Commission has approved the use of campaign funds to purchase copies of a book authored by the candidate because royalties from the sale were donated to charity. See, e.g., Advisory Opinion Nos. 1995-46, 2001-8. According to the Commission's earlier analysis, the fact that the candidate would "not receive proceeds from the proposed transactions also indicates that personal use of campaign funds will not result." Id. 1995-46. Given that the Committee could buy copies of Congresswoman Granger's book without the purchase being treated as a personal use of campaign funds, it appears that the Committee also may use campaign funds to pay for the promotional materials without the expenditure becoming a conversion of campaign funds for personal use.

For the foregoing reasons, we respectfully request an advisory opinion confirming the permissibility of the proposed activities.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jan Baran", written in a cursive style.

Jan Witold Baran
Andrew G. Woodson

